

AMENDED IN SENATE JULY 23, 2003

AMENDED IN SENATE MAY 21, 2003

AMENDED IN SENATE APRIL 21, 2003

SENATE BILL

No. 849

Introduced by Senators Torlakson and Alpert

February 21, 2003

An act to ~~add Section 1936.2 to~~ *add and repeal Section 1936.2 of, and to repeal and add Section 1936.3 of,* the Civil Code, relating to rental vehicle transaction fees, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 849, as amended, Torlakson. Rental vehicle *license* transaction fees.

(1) Existing law regulates the contents of vehicle rental agreements used by businesses that rent passenger vehicles to the public, as specified. Existing law, the Vehicle License Fee (VLF) Law, also establishes, in lieu of any ad valorem property tax upon vehicles, an annual license fee for any vehicle subject to registration in this state in the amount of 2% of the market value of that vehicle, as specified. The VLF Law offsets this amount by 67.5% for vehicle license fees with a final due date on or after July 1, 2001.

This bill would, until January 1, 2007, *except as specified*, require a rental company to collect from renters ~~an amount calculated by the Department of Motor Vehicles, as specified, to reimburse rental companies for the difference between the vehicle license fee rate that was in effect on January 1, 2003, and any increase to that rate that subsequently takes effect~~ *a vehicle license transaction fee to be*

calculated, as specified, and transmitted to the Controller. The bill would also provide that a rental company shall submit certain information to the ~~department~~ Department of Finance under penalty of perjury. The rental company would be liable for specified civil fines for failure to submit this information on time or submitting false information. Accounts over-collected, as specified, would escheat to the state. ~~The department would be authorized to audit rental company records to verify the information provided.~~

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

(2) Under existing law, perjury is a felony punishable by imprisonment in the state prison, as specified.

This bill would require certain information submitted to the Department of ~~Motor Vehicles~~ Finance on behalf of a rental company to be verified under penalty of perjury. By expanding the definition of a crime, the bill would impose a state-mandated local program.

(3) *The bill would provide that this bill and AB 118 shall become operative only if both bills are chaptered on or before January 1, 2004, and AB 118 is chaptered last.*

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~(4)~~

(5) The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1936.2 is added to the Civil Code, to
2 read:

1 ~~1936.2.—(a) For the purposes of this section, the definitions~~
2 ~~set forth in Section 1936 shall apply, as well as the following~~
3 ~~definitions:~~

4 ~~(1) “Department” means the Department of Motor Vehicles.~~

5 ~~(2) “Rental car” or “rental vehicles” means a passenger~~
6 ~~vehicle that is offered for rent by a rental company for use by a~~
7 ~~renter and that is registered in this state.~~

8 ~~(3) “Rental transaction” means that portion of an agreement to~~
9 ~~rent a rental vehicle that is subject to taxation under the Sales and~~
10 ~~Use Tax Law (Part 1 (commencing with Section 6001) of Division~~
11 ~~2 of the Revenue and Taxation Code), or any successor to that law.~~

12 ~~(4) “Vehicle license transaction fee” means the fee to be~~
13 ~~collected from each renter on each transaction that enables rental~~
14 ~~companies doing business in this state to recapture from their~~
15 ~~renters, in the aggregate on an annual basis, an amount that~~
16 ~~represents 80 percent of the difference between the vehicle license~~
17 ~~fees actually paid upon registration of the rental cars and the~~
18 ~~vehicle license fee calculated at the rate fee in effect on January 1,~~
19 ~~2003. The rate shall be calculated in accordance with~~
20 ~~subparagraph (A) of paragraph (1) of subdivision (d). During the~~
21 ~~initial period of this section’s operation, “annual” means the~~
22 ~~period commencing on the effective date of this section and ending~~
23 ~~on December 31, 2004.~~

24 ~~(5) “Reporting period” means the calendar year.~~

25 ~~(6) “Initial period” means the time beginning with the~~
26 ~~effective date of this act and ending with December 31, 2004.~~

27 ~~(7) “Aggregate reimbursable vehicle license fees” means the~~
28 ~~difference between the vehicle license fee paid at the time of~~
29 ~~registration or renewal and the vehicle license fee calculated at the~~
30 ~~rate in effect on January 1, 2003, for all rental cars registered or~~
31 ~~renewed by all rental car companies during the reporting period.~~

32 ~~(b) Nothing in this section affects a rental company’s~~
33 ~~requirement to register and pay registration fees and vehicle~~
34 ~~license fees on all applicable rental vehicles in its fleet.~~

35 ~~(c) Notwithstanding Section 1936 or any other provision of~~
36 ~~law, a rental company shall impose a vehicle license transaction~~
37 ~~fee to be collected from the renter on each rental transaction, that~~
38 ~~shall be separately stated and charged on the rental agreement, at~~
39 ~~the amount established pursuant to subdivision (d).~~

~~(1) The vehicle license transaction fee shall be advertised, quoted, and charged in the same manner that an airport customer facility charge is required to be advertised, quoted, and charged pursuant to Section 1936, as those provisions read on January 1, 2003.~~

~~(2) Notwithstanding any other provision of law, including, but not limited to, Part 1 (commencing with Section 6001) to Part 1.7 (commencing with Section 7280), inclusive, of Division 2 of the Revenue and Taxation Code, the fees collected pursuant to this section shall not be subject to sales, use, or transaction taxes.~~

~~(d) (1) (A) The rate for the vehicle license transaction fee shall be determined by dividing aggregate reimbursable vehicle license fees paid for original and renewal vehicle license fees during the reporting period by aggregate rental car revenue for all rental car companies during the reporting period, and then multiplying the number by 80 percent.~~

~~(B) Annually, no later than January 31 of the year following the reporting period, each company shall report to the department the following information regarding the reporting period:~~

~~(i) Total vehicle license fees paid for all rental cars at time of original and renewal registration.~~

~~(ii) Total rental car revenue, excluding all optional products and services, subject to sales tax.~~

~~(iii) Total vehicle license transaction fees collected from customers.~~

~~(C) Information required under subparagraph (B) to be filed by January 31, 2005, shall include information for the entire initial period.~~

~~(D) Information submitted pursuant to subparagraph (B) shall be verified under penalty of perjury. In addition, a rental company shall be liable for either or both of the following:~~

~~(i) A civil fine of no more than twenty-five thousand dollars (\$25,000) for failure to submit information on or before the due date.~~

~~(ii) A civil fine of no more than fifty thousand dollars (\$50,000) for submitting false information.~~

~~(2) Notwithstanding subparagraph (A) of paragraph (1), for the initial period, the rate for the vehicle license fee shall be as follows:~~

1 ~~(A) If the vehicle license fee, including any offsets to that fee,~~
2 ~~is a sum equal to 1.5 percent of the market value of the vehicle, the~~
3 ~~vehicle license transaction fee shall be 1.31 percent.~~

4 ~~(B) If the vehicle license fee is 2 percent of the market value,~~
5 ~~the vehicle license transaction fee shall be 2.71 percent.~~

6 ~~(3) (A) Within 30 days following submission of the~~
7 ~~information pursuant to subparagraph (B) of paragraph (1), the~~
8 ~~department shall report the aggregate data and any comments to~~
9 ~~the Assembly and Senate Committees on Judiciary.~~

10 ~~(i) If the total amount of vehicle license transaction fees~~
11 ~~collected exceeds, in the aggregate for the reporting period, 80~~
12 ~~percent of the difference in vehicle license fees for rental cars~~
13 ~~actually paid to the department at the time of registration or~~
14 ~~renewal and the vehicle license fee calculated at the rate in effect~~
15 ~~on January 1, 2003, the department shall reduce the fee rate. The~~
16 ~~adjusted rate shall take effect not less than 60 days following the~~
17 ~~announcement of the department's determination.~~

18 ~~(ii) If the total amount of vehicle license transaction fees~~
19 ~~collected, in aggregate for the reporting period, is less than 80~~
20 ~~percent of the difference in vehicle license fees for rental cars~~
21 ~~actually paid to the department at the time of registration or~~
22 ~~renewal and the vehicle license fee calculated at the rate in effect~~
23 ~~on January 1, 2003, the department shall recommend an amount~~
24 ~~of increase in its report to the Assembly and the Senate~~
25 ~~Committees on Judiciary. However, if the fee rate is below that~~
26 ~~maximum fee rate specified in subparagraph (A) or (B) of~~
27 ~~paragraph (2) when the rate increase determination is made, the~~
28 ~~department shall increase the fee rate up to that maximum statutory~~
29 ~~rate, as appropriate. A recommendation of any additional increase~~
30 ~~shall be included in the department's report to the Assembly and~~
31 ~~Senate Committees on Judiciary.~~

32 ~~(iii) If the information shows that the fee rate is not resulting in~~
33 ~~overcollection or undercollection, the department shall continue~~
34 ~~the current fee rate and report the aggregated data and its~~
35 ~~conclusions to the Assembly and the Senate Committee on~~
36 ~~Judiciary.~~

37 ~~(B) An adjustment, if any, shall be based on information~~
38 ~~submitted pursuant to subparagraph (B) of paragraph (1) by each~~
39 ~~rental company.~~

~~The information submitted by each company shall be kept confidential by the department, although aggregated information that does not reveal the company or companies that contributed to the aggregated information may be disclosed pursuant to the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8).~~

~~(C) An overcollection by any rental company shall escheat to the state pursuant to Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure. The rental company's relinquishment of the excess to the state shall constitute a refusal to accept the excess fee pursuant to operation of law, under Section 1300 of the Code of Civil Procedure. An "overcollection" means an amount that exceeds 80 percent of the difference between that which the rental company would have paid for vehicle license fees had the fees remained at the rate in effect on January 1, 2003, and the amount of vehicle license fees actually paid by the rental company to the department during the reporting period.~~

~~(D) The department may impose a reasonable fee on rental companies to reimburse the state for the cost of implementing this section.~~

~~(e) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.~~

~~SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~

~~SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:~~

~~The vehicle license fee rate may be increased during calendar year 2003, and the purposes of this act will not be fully accomplished unless this act goes into effect on or before that time.~~

1 1936.2. (a) For the purposes of this section and Section
2 1936.3, the definitions set forth in Section 1936 shall apply, as well
3 as the following definitions:

4 (1) "Department" means the Department of Finance.

5 (2) "Rental car" means a passenger vehicle that is offered for
6 rent by a rental company for use by a renter and that is registered
7 in this state.

8 (3) "Rental transaction" means an agreement to rent a rental
9 car, exclusive of all optional products, services, and nontaxable
10 items.

11 (4) "Vehicle license transaction fee" means the fee associated
12 with increased vehicle license fee notes that is collected from each
13 renter on each rental transaction.

14 (5) "Reporting period" means the 12-month period beginning
15 on the effective date of this section, and each succeeding 12-month
16 period thereafter.

17 (b) Nothing in this section shall be construed to change the
18 requirements governing vehicle registration or payment of
19 registration fees and vehicle license fees on rental cars.

20 (c) Notwithstanding Section 1936 or any other provision of law,
21 a rental company shall impose a vehicle license transaction fee to
22 be collected from the renter on each rental transaction, that shall
23 be separately stated and charged on the rental agreement, at the
24 amount established pursuant to Section 1936.3.

25 (1) The vehicle license transaction fee shall be advertised,
26 quoted, and charged in the same manner that an airport customer
27 facility charge is required to be advertised, quoted, and charged
28 pursuant to Section 1936, as those provisions read on January 1,
29 2003.

30 (2) Notwithstanding any other provision of law, including, but
31 not limited to, Part 1 (commencing with Section 6001) to Part 1.7
32 (commencing with Section 7280), inclusive, of Division 2 of the
33 Revenue and Taxation Code, the fees authorized by this section and
34 collected pursuant to Section 1936.3 shall not be subject to sales,
35 use, or transaction taxes.

36 (d) (1) (A) Annually, no later than 90 days following the
37 reporting period, each rental company shall report to the
38 Department of Finance the following information regarding
39 activities during the reporting period:

40 (i) Total vehicle license fees paid for all rental cars.

1 (ii) Total rental car revenue, exclusive of all optional products,
2 services, and nontaxable items.

3 (iii) Total vehicle license transaction fees collected from
4 renters.

5 (B) Information submitted pursuant to subparagraph (A) shall
6 be verified under penalty of perjury. In addition, a rental company
7 shall be liable for either or both of the following:

8 (i) A civil fine of no more than twenty-five thousand dollars
9 (\$25,000) for failure to submit information on or before the due
10 date.

11 (ii) A civil fine of no more than fifty thousand dollars (\$50,000)
12 for submitting false information.

13 (2) (A) Within 30 days following submission of the information
14 pursuant to subparagraph (A) of paragraph (1), the department
15 shall report the aggregate data and any comments to the Assembly
16 and Senate Committees on Judiciary.

17 (B) The information submitted by each rental company shall be
18 kept confidential by the department, although aggregated
19 information that does not reveal the rental company or companies
20 that contributed to the aggregated information may be disclosed
21 pursuant to the Information Practices Act of 1977 (Chapter 1
22 (commencing with Section 1798) of Title 1.8).

23 (C) The department shall impose a reasonable fee on rental
24 companies to reimburse the state for the cost of implementing and
25 administering this section and Section 1936.3.

26 (D) The department may audit the records of rental companies
27 to verify the information they provide.

28 (e) This section shall remain in effect only until January 1,
29 2007, and as of that date is repealed, unless Assembly Bill No. 118
30 of the 2003–04 Regular Session deletes or extends that date.

31 SEC. 2. Section 1936.3 is added to the Civil Code, to read:

32 1936.3. (a) For the purposes of this section, the definitions
33 set forth in Sections 1936 and 1936.2 shall apply, as well as the
34 following definitions:

35 (1) “Aggregate reimbursable vehicle license fees” means the
36 difference between the amount of vehicle license fees paid at the
37 time of registration or renewal and the amount of vehicle license
38 fees which would have been owed if the rate in effect on January
39 1, 2003, had been in effect for all rental cars registered or renewed
40 by all rental companies during the reporting period.

(2) “Aggregate rental car revenue” means the total rental car revenue, excluding all optional products and services, that is subject to the sales tax.

(b) (1) The rate for the vehicle license transaction fee established by Section 1936.2 shall be determined by dividing the aggregate reimbursable vehicle license fees paid for original and renewal vehicle license fees during the reporting period by the aggregate rental car revenue for all rental car companies during the reporting period, and multiplying that number by 80 percent.

(2) Notwithstanding paragraph (1), for the first reporting period, the rate for the vehicle license transaction fee shall be 2.71 percent of the rental transaction.

(c) (1) If the total amount of vehicle license transaction fees collected exceeds, in the aggregate for the reporting period, 80 percent of the difference in vehicle license fees for rental cars actually paid to the department at the time of registration or renewal and the vehicle license fees calculated at the rate in effect on January 1, 2003, the department shall reduce the vehicle license transaction fee rate. The adjusted rate shall take effect not less than 60 days following the announcement of the department’s determination.

(2) If the total amount of vehicle license transaction fees collected, in aggregate for the reporting period, is less than 80 percent of the difference in vehicle license fees for rental cars actually paid to the department at the time of registration or renewal and the vehicle license fees calculated at the rate in effect on January 1, 2003, the department shall recommend an amount of increase in the vehicle license transaction fee rate in its report to the Assembly and the Senate Committees on Judiciary. However, if the vehicle license transaction fee rate is below the maximum fee rate specified in subdivision (b) when the rate increase determination is made, the department shall increase the fee rate up to that maximum statutory rate, as appropriate. A recommendation of any additional increase shall be included in the department’s report to the Assembly and Senate Committees on Judiciary.

(3) If the information shows that the vehicle license transaction fee rate is not resulting in overcollection or undercollection, the department shall continue the current fee rate and report the

1 aggregated data and its conclusions to the Assembly and the
2 Senate Committees on Judiciary.

3 (d) An adjustment, if any, shall be based on information
4 submitted by each rental company pursuant to subparagraph (A)
5 of paragraph (1) of subdivision (d) of Section 1936.2.

6 (e) An overcollection by any rental company shall escheat to
7 the state pursuant to Title 10 (commencing with Section 1300) of
8 Part 3 of the Code of Civil Procedure. The rental company's
9 relinquishment of the excess to the state shall constitute a refusal
10 to accept the excess fee pursuant to operation of law, under Section
11 1300 of the Code of Civil Procedure. An "overcollection" means
12 an amount that exceeds 80 percent of the difference between that
13 which the rental company would have paid for vehicle license fees
14 if those fees had remained at the rate in effect on January 1, 2003,
15 and the amount of vehicle license fees actually paid by the rental
16 company to the department during the reporting period.

17 SEC. 3. This bill and Assembly Bill No. 118 of the 2003–04
18 Regular Session shall become operative only if both bills are
19 chaptered on or before January 1, 2004, and Assembly Bill No. 118
20 is chaptered last.

21 SEC. 4. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.

30 SEC. 5. This act is an urgency statute necessary for the
31 immediate preservation of the public peace, health, or safety
32 within the meaning of Article IV of the Constitution and shall go
33 into immediate effect. The facts constituting the necessity are:

34 The vehicle license fee rate has been increased and the new rate
35 will take effect prior to January 1, 2004. Accordingly, the purposes
36 of this act will not be fully accomplished unless this act goes into
37 effect immediately.

